

senior management if the transaction were terminated, but that if it completed the transaction, BofA would receive additional federal assistance to provide a financial cushion for its taking on Merrill Lynch's liabilities. Treasury had made a \$25 billion capital infusion into BofA in October 2008, and it made an additional \$20 billion infusion into BofA in January 2009, after the Merrill Lynch acquisition was completed.

The fact and nature of the discussions among the Treasury, the Board, and BofA – whatever their exact content - were disclosed neither to the shareholders of BofA nor to the public, whose tax dollars the TARP spends. But for Attorney General Cuomo, the nondisclosure would continue to this day.

The reaction to these disclosures underscores the importance of clear, timely, communication with the American people, to say nothing of affected investors, about the financial stability package. Unexpected disclosures only increase the perception that the government cannot operate openly in administering the TARP, despite the fact that the country's largest banks are being supported with billions of dollars of public funds.

More important, this interaction among Treasury, the Board, and BofA is a warning of the dangers that can arise when the government acts simultaneously as regulator, lender of last resort, and shareholder. (Treasury had purchased \$15 billion in convertible preferred stock and warrants of BofA on October 28, 2008; as indicated above, it purchased an additional \$20 billion of BofA preferred stock and warrants on January 16, 2009.) The TARP by its very nature creates conflicts of interest for Treasury and the Board. The conflicts can arise not only when the nation's senior financial officials are faced with decisions by a private institution that they believe would adversely affect the stability plan, but also when they are asked to make regulatory decisions that affect the institutions in which the government holds shares. Federal officials can act effectively under these circumstances only if strict controls, transparency, and a disciplined response to situations at all levels, earn the trust of the financial sector, the investment community, and the public.

The Panel is interested in your thoughts on how to manage this inherent conflict and on the controls you have put in place to ensure that your efforts to provide stability to the country's financial system are not undermined by these conflicts.

Very truly yours,

A handwritten signature in dark ink, appearing to read "E. Warren", with a stylized, flowing script.

Elizabeth Warren
Chair
Congressional Oversight Panel